*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition Nos.10838 of 2004 and Batch

%20.08.2004

£Sree Krishna Chaitanya Degree College, Rep. by
Correspondent, Sri R.V. Rami Reddy,
S/o. Dasaradha Rami Reddy, aged about 39 years,
Near Madras Bus Stand, Nellore and others.

…Petitioners

Vs.

$1. The Registrar, Sri Venkateswara University,
Tirupathi, Chittoor District and others.

… Respondents

!For the petitioners …Smt. Jyothi Eswar Gogineni &
others

^For the Respondents …Mr. B.Adinarayana Rao &
others

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1993 SC 2178
2. AIR 1974 SC 1389
3. (2002) 5 ALT 320
4. AIR 1957 SC 912
5. (2001) 7 SCC 708
6. AIR 1984 SC 1757
7. AIR 1996 SC 1469
8. (1987) 1 SCC 13
9. (1994) 2 SCC 718
10. 2001(6) ALT 240 (FB)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF AUGUST

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.10838, 10865, 10974, 11149, 11163, 11164, 11885, 12330, 12503, 12518, 12584, 12610, 12620, 12665, 12671, 12683 and 12703 of 2004

WRIT PETITION NO : 10838 of 2004

Between:

Sree Krishna Chaitanya Degree College, Rep by Correspondent, Sri R.V. Rami Reddy,S/o. Dasaradha Rami Reddy, aged about 39 years,
Near Madras Bus Stand, Nellore.

..... PETITIONER

AND

The Registrar, Sri Venkateswara University, Tirupathi, Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS, declaring that the action of the respondent in issuing the impugned notice dated 24-6-2004 is in violation of the provisions of G.O.Ms.No. 29 Rule 9(2) (b), dated 15-7-1987, R/W,G.O.R.T.NO. 1623, dated 12-10-1990, and is arbitrary, unconstitutional, and illegal and to further direct the respondent to relax the time for fulfilling the norms as per G.O.29 Rule 9(2) (b), to SREE KRISHNA CHAITANTYA DEGREE COLLEGE, Near Madras Bus Stand, Nellore (Petitioner herein).

Counsel for the Petitioner:SMT.JYOTHI ESWAR GOGINENI

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 10865 of 2004

Between:

Sri Venkateswara Arts & Science Degree College, Officer's Lane Chittoor-517 001, A.P.,
rep by Correspondent Dr. R. Venkata Swamy

..... PETITIONERS

AND

1 Sri Venkateswara University Tirupati, Chittoor District rep by Registrar
2 State of a.P. rep by Principal Secretary, Higher Education (CE.II) Dept., Secretariat, Hyderabad
3 A.P. State council of Higher Education, Post Box No. 34, Saifabad Hyderabad-500 004,
rep by Secretary

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, especially one in the nature of Mandamus: (i) declare the impugned order dated 24-6-2004 of the 1st Respondent as illegal, arbitrary and without jurisdiction and set aside the same; (ii) direct the respondents to continue the affiliation to the petitioners college inview of G.O.Rt. No. 991 dated 24-11-2003 and consequential proceedings.

Counsel for the Petitioner:MR.V.JOGAIAH SARMA

Counsel for the Respondent No.1: MR.B.ADINARAYANA RAO, SC for S.V.University

Counsel for Respondent No.2 &3:GP FOR HIGHER EDUCATION

WRIT PETITION NO : 10974 of 2004

Between:

M.S.R. Degree College, Kavali, Rep. by its Correspondent Sri Dr. D. Venkateswara Reddy,
S/o Venka Reddy, R/o Co-operative Colony, Kavali, Nellore District.

..... PETITIONER

AND

1 The Principle Secretary, Higher Education, Government of A.P. Secretariat, Hyderabad.

2 The Registrar, Sri Venkateswara University, Tirupati.
3 The Secretary, A.P. State Council for Higher Education, Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction more particularly one in the nature of "Writ of Mandamus" declaring the action of the respondents in de-affiliating the petitioner college from Sri Venkateswara University as illegal, and arbitrary, irrational and violative of Principles of Natural Justice, consequentially to declare the condition to run the petitioner college in own building as directory but not mandatory,

Counsel for the Petitioner:MR.UNNAM.MURALIDHAR RAO

Counsel for the Respondent No.2: MR.B.ADINARAYANA RAO, SC for S.V.University

Counsel for Respondent Nos.1&3: GP FOR HIGHER EDUCATION

WRIT PETITION NO : 11149 of 2004

Between:

Aditya Degree College, Rep. by its Correspondent,Sri B. Rami Reddy, S/o. Venkatasubba Reddy 58 years, Aditya Nagar, Nellore-2.

..... PETITIONER

AND

The Registrar, Sri Venkateswara University, Tirupathi, Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring that the action of the respondent in issuing the impugned notice dt. 24.06.2004 is in violation of the provisions of G.O.lMs.No.29 rule 9 (2) (b) Dated 15.7.1987, R/W. G.O.R.T.No.1623, dt. 12.10.1990 , and is arbitrary, unconstitutional, and illegal and to further direct the respondent to relax the time for fulfilling the norms as per G.O.29 Rule 9 (2) (b) , Aditya Degree College, Nellore-2, (petitioner herein).

Counsel for the Petitioner:MR.B.V.SUBBAIAH

Counsel for the Respondent : Mr.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 11163 of 2004

Between:

Vivekananda Degree College, Rohini Nagar, Nellore,
Rep by its Secretary & Correspondent, Sri P. Radha Krishna, S/o. P. Narsimham, aged 42 years, R/o. Aravind Nagar, Nellore.

..... PETITIONER

AND

The Registrar, Sri Venkateswara University, Tirupathi, Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS, declaring that the action of the respondent in issuing the impugned notice dated 24-06-2004 is in violation of the provisions of G.O. Ms. No. 29 Rule 9(2)(b), dated 15-7-1987, R/w. G.O.R.T. No. 1623, dated 12-10-1990, and is arbitrary, unconstitutional, and illegal and to further direct the respondent to relax the time for fulfilling the norms as per G.O.Ms. No. 29 Rule 9(2)(b), VIVEKANANDA DEGREE COLLEGE, Rohoni Nagar, Nellore, (Petitioner herein) and to pass

Counsel for the Petitioner:SMT.JYOTHI ESWAR GOGINENI

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 11164 of 2004

Between:

Sri. Vaishnavi Degree College, Rep. by its Correspondent, Sri P.V.Ramana Reddy, S/o. P. Venkata Reddy R.S.Road, Rajampet, Cuddpah District.

..... PETITIONER

AND

The Registrar, Sri Venkateswara University,
Tirupathi, Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring that the action of the respondent in issuing the impugned notice dt. 24.06.2004 is in violation of the provisions of G.O.Ms.No. 29 rule 9 (2) (b), dt. 15.7.1987, R/W, G.O.R.T.No.1623, dt. 12.10.1990, and is arbitrary, unconstitutional, and illegal and to further direct the respondent to relax the time for fulfilling the norms as per G.O.29 Rule 9 (2) (b), Sri Vaishnavi Degree College, R.S.Raod, Rajampet, Cuddpah District (Petitioner herein) .

Counsel for the Petitioner:SMT.JYOTHI ESWAR GOGINENI

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 11885 of 2004

Between:

Krishna Sarada Degree College, Porumamilla, rep., by its Correspondent P.Nagarjuna Reddy, S/o Bhaskar Reddy, r/o Porumamilla, Kadapa District.

..... PETITIONER

AND

Sri Venkateswara University, rep., by its Registrar, Tirupathi,
Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or writ one in the nature of writ of mandamus, declaring the action of the respondent in issuing the Impugned Notice in Proc.No.5559/C-III(5)/C.C./2003, dt.24-06-2004 is in violation of the provisions of G.O.Ms.No.29, Rule 9(2)(b), dt.05-02-1987, R/W G.O.R.T.No.1623, dt.12-10-1990, is arbitrary, illegal, unconstitutional and Consequently to direct the respondent relax the time for fulfilling the norms as per G.O.Ms.No.29, Rule 9(2)(b), dt.05-02-1987

Counsel for the Petitioner:SMT.N.SHOBA

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 12330 of 2004

Between:

Indira Rajiv Memorial Degree College rep by its Correspondent
Sri G.M.Ramanadham s/o. G.v. Muniratnam Udaya,
52 years, R/o. Kuppam Chittoor District.

..... PETITIONER

AND

The Registrar Sri Venkateswara University Tirupathi, Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring that the action of the respondent in issuing the impugned notice dated 24.6.2004 is in violation of the provisions of G.O.Ms.No.29, dated 15.7.1987 r/w G.O.R.T No.1623 dated 12-10-1990 and is arbitrary, unconstitutional and illegal and to further direct the respondent to relax the time for fulfilling the norms as per G.O.29, to INDIRA RAJIV MEMORIAL DEGRE COLLEGE, Kuppam Chittoor District (Petitioner herein).

Counsel for the Petitioner:SMT.JYOTHI ESWAR GOGINENI

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 12503 of 2004

Between:

H.M.Degree College, rep.by its Correspondent Sri Sayed Basha Saheb, S/o Shamshudden, Bose Nagar, Rayachoti, Cuddapah District.

..... PETITIONER

AND

The Registar, Sri Venkateswara University,
Tirupathi, Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring that the action of the respondent in issuing the impugned notice dated 24-06-2004 is in violation of the provisions of G.O.M.S.No.29 Rule 9(2) (b), dated 15-7-1987, R/w.G.O.R.T.No.1623, dated 12-10-1990, and is arbitrary, unconstitutional, and illegal and to further direct the respondent to relax the time for fulfilling the norms as per G.O.29 Rule 9(2) (b), H.M.Degree College, Bose Nagar, Rayachoti, Cuddapah District (Petitioner herein).

Counsel for the Petitioner:SMT.JYOTHI ESWAR GOGINENI

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 12518 of 2004

Between:

Dr. A.E.R. Degree/P.G. College, No. 533, Reddy & Reddy Colony, Tirupathi-517 501, Chittor Dsitrict, rep by its Correspondent, Dr. Agarala Eswar Reddy, S/o. Agarala Venkata Subba Reddy, Aged about 71 years, r/o. Tirupathi.

..... PETITIONER

AND

1 Sri Venkateswara University, Tirupathi, Chittoor District, rep., by its Registrar .
2 The Government of Andhra Pradesh, rep by the Secretary, Department of Higher Education, Secretariat Buildings, Hyderabad.
3 The A.P. State Council of Higher Education, Saifabad, Hyderabad rep. by its Secretary.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction in the nature of Mandamus declaring the action of the first Respondent University in not granting extension of temporary conditional affiliation to the petitioner college for the academic year 2004-2005 by its proceedings dt.24.06.2004 as illegal, arbitrary and violative of the fundamental rights of the petitioner College and consequently direct the 1st Respondent University to

grant temporary conditional affiliation to the petitioner college till the expiry of ten years from the date of its establishment as per Rule 9 (2) (b)of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 contained in G.O.Ms. No. 29, Education (Rules) dated 5-2-1987 read with G.O. Rt. No. 1623, dated 12-10-1990.

Counsel for the Petitioner:MR.P.V.SANJAY KUMAR

Counsel for the Respondent:1 : MR.B.ADINARAYANA RAO, SC for S.V.University

Counsel for the Respondent Nos.2,3: GP FOR HIGHER EDUCATION

WRIT PETITION NO : 12584 of 2004

Between:

Sree Veda Vyasa Degree College, T.B. Road, Proddatur, Kadapa District, rep by its Correspondent B. Rama Devi, W/o. B. Narasimha Reddy, and 44 years.

..... PETITIONER

AND

Sri Venkateswara University, Tirupati, Chittoor District, rep by its Registrar.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the order of the respondent passed in No. 5559/C-III(5)/C.C./2003 dated 24-6-2004 as illegal, arbitrary and contrary to the rules and consequently direct the respondent to consider the application of the petitioner college for conditional recognition for the year 2004-05.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 12610 of 2004

Between:

Sri C. Sivashankar Reddy and Subbarami Reddy, Memorial Degree College,

Kamalapuram, Kadapa District. Rep. by its Correspondent C. Rajagopal Reddy, S/o. C. Budda Reddy, aged 37 years.

..... PETITIONER

AND

Sri Venkateswara University, Tirupati,Chittoor District, rep. by its Registrar

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the order of the respondent passed in No. 5559/C-III(5)/C.C./2003 dated 24-6-2004 as illegal, arbitrary and contrary to the rules and consequently direct the respondent to consider the application of the petitioner college for conditional recognition for the year 2004-05.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

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WRIT PETITION NO : 12620 of 2004

Between:

Sri Gobula Krishna Reddy Degree College 1/334 Maruthi Nagar, Kadapa, rep. by its Correspondent P. Surendranath Reddy, S/o. P. Madhava Reddy, age about 45 Years.

..... PETITIONER

AND

Sri Venkateswara University Tirupathi, Chittoor District.
rep. by its Registrar.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any other appropriate Writ or direction declaring the order of the respondent passed in No. 5559/C-III(5)/C.C/2003 dated 24-6-2004 as illegal, arbitrary and contrary to the rules and consequently direct the respondent to consider the application of the Petitioner college for conditional recognition for the year 2004-05.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 12665 of 2004

Between:

Sri Balaji Degree College for Women, 6-1-160, Varadharaja Nagar, K.T.road, Tirupati, Chittoor District, rep., by its Correspondent, Dr.R.Venkata Swamy.

..... PETITIONER

AND

1 Sri Venkateswara University, Tirupathi, Chittoor District rep.by its Registrar
2 State of A.P, rep.by its Principal Secretary, Higher Education (CE.II) Department, Secretariat, Hyderabad
3 A.P.State Council of Higher Education, Post Box No.34, Saifabad, Hyderabad, rep.by its Secretary

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, especially one in the nature of Mandamus : (1) declare the impugned order dated 24-6-2004 of the 1st respondent as illegal, arbitrary and without jurisdiction and set aside the same; (ii) direct the respondents to continue the affiliation to the petitioners college for the academic year 2004-05.

Counsel for the Petitioner:MR.V.JOGAIAH SARMA

Counsel for the Respondent NO.1: MR.B.ADINARAYANA RAO, SC for S.V.University

Counsel for the Respondent No.2&3: G.P.for Higher Education

WRIT PETITION NO : 12671 of 2004

Between:

Sri C.Dass Arts & Science College, Sathyavedu, Chittoor District, rep.by its Correspondent, Dr.R.Venkata Swamy

..... PETITIONER

AND

1 Sri Venkateswara University, Tirupathi, Chittoor District rep.by its Registrar
2 State of A.P, rep.by its Principal Secretary, Higher Education (CE.II) Department, Secretariat, Hyderabad
3 A.P.State Council of Higher Education, Post Box No.34, Saifabad, Hyderabad, rep.by its Secretary

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, especially one in the nature of Mandamus : (1) declare the impugned order dated 24-6-2004 of the 1st respondent as illegal, arbitrary and without jurisdiction and set aside the same; (ii) direct the respondents to continue the affiliation to the petitioners college for the academic year 2004-05.

Counsel for the Petitioner:MR.V.JOGAIAH SARMA

Counsel for the Respondent No.1: MR.B.ADINARAYANA RAO, SC for S.V.University

Counsel for Respondents 2&3: G.P. for Higher Education

WRIT PETITION NO : 12683 of 2004

Between:

Sri Parameswara Degree College jammalamadugu Kadapa District, rep. by its Correspondent, Shri R.Rajeswara Reddy S/o Narayana reddy, aged 54 years.

..... PETITIONER

AND

Sri Venkateswara University Tirupati , Chittoor district rep. by its Registrar

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of Mandamus or any other appropriate writ or direction declaring the order of the respondent passed in No. 5559/C-III(5)/C.C/2003 dt. 24/06/2004 as illegal, arbitrary, and contrary, to the rules and consequently direct the respondent to

consider the application of the petitioner college for conditional recognition for the year 2004-05.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondent : MR.B.ADINARAYANA RAO, SC for S.V.University

WRIT PETITION NO : 12703 of 2004

Between:

Sri Venkateswara Degree College, Trunk Road, Nellore rep. by its Correspondent, Sri P.Sunil Kumar, R/o.Trunk Road, Nellore, Nellore Dist.

..... PETITIONER

AND

The Sri Venkateswara University, Tirupathi, rep.by its Registrar.Tirupathi, Chittoor Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in issuing the impugned notice dt.24-6-2004 bearing No.5559/C-III (5)/CC/2003, is in violation of the provisions of G.O.Ms.No.29 Rule 9 (2) (b) dt. 15-7-1987 R/w.G.O.Rt.No.1623 dt.12-10-1990 and is arbitrary, unconstitutional, illegal and in violation of Article 14 of Constitution of India and consequently direct the respondent to relax the time for fulfilling the norms as per G.O.29 Rule 9(2) (b) dt.15-7-1987.

Counsel for the Petitioner:MR.M.VENKATA NARAYANA

Counsel for the Respondent : MR. B.ADINARAYANA RAO,SC for S.V.University

The Court made the following order:

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.10838, 10865, 10974, 11149, 11163, 11164, 11885, 12330, 12503, 12518, 12584, 12610, 12620, 12665, 12671, 12683 and 12703 of 2004

COMMON ORDER:

All the petitioners are private educational institutions in the Districts of Chittoor, Kadapa and Nellore. They were affiliated temporarily to Sri Venkateswara University (the University, for short) since the date of establishment of respective colleges. For the academic year 2004-05, however, the University informed the petitioners that extension of temporary conditional affiliation is not granted and that the question of granting further affiliation would be considered after the colleges shift to own buildings. The colleges were directed not to make admissions to first year courses during the academic year 2004-05. The communication from the Registrar of University dated 24.06.2004 is challenged by all the colleges on various grounds.

Background facts

Taking the Writ Petition No.10974 of 2004 as illustrative case, facts may be noticed in brief. The petitioner college obtained permission under Section 20 of A.P.Education Act, 1982 (the Education Act, for brevity) in the year 1993 as women's degree college offering degree courses like B.A., B.Com., and B.Sc., in English and Telugu medium. The petitioner college deposited corpus amount of Rs.9,50,000/- (Rupees nine lakh and fifty thousand only) for the purpose of obtaining affiliation of the University. By proceedings No.8709/C III (5)/1993-94, dated 15.09.1993, the Registrar of the University informed the correspondent of Sri

Magunta Raghava Reddy Charitable Trust (The Educational Agency, which established petitioner college) that the committee constituted by the Board of Management at its meeting held on 13.09.1993 considered the application of the petitioner college, the recommendations made by the Inspection Commission thereon and resolved to recommend to grant provisional permission for starting the college with B.A., B.Com., and B.Sc., with specified number of students. It was mentioned therein that the recommendations of the committee had been approved by the Rector subject to ratification by the standing committee of the Academic Senate and Board of Management and that the provisional permission is granted subject to fulfilment of the conditions specified by the Inspection Commission, G.O.Ms.No.208 dated 21.08.1990, G.O.Ms.No.1623 dated 12.10.1990, G.O.Ms.No.119 dated 22.03.1991 and other G.Os as well as Chapter XI of Laws of University. The said proceeding also is to the effect that the University granted provisional permission/conditional affiliation to the petitioner college for the academic year 1993-94 and that the same is not applicable for the academic year 1994-95. The college was advised to apply well in advance not later than 31.01.1994 for grant of further affiliation and further advised that unless and until University grants further affiliation for 1994-95, the college should not advertise the courses and should not make admissions for the academic year. The University reserved its right to cancel the admissions made without obtaining prior permission.

The petitioner college was established in Kavali town in rented premises. In the year 2001, petitioner, which was a women's college, applied for conversion to co-education college, which was accordingly granted by the University and A.P. State Council for Higher Education (hereafter called, the State Council). Be it also noted that during these years the petitioner college shifted its premises from one rented building to another rented building. Every year, year after year, the University granted temporary affiliation for one academic year to the petitioner college.

The petitioner claims that the college, one of the two in Kavali town enjoys good reputation and there is lot of demand for seats in various courses and that up to 25.06.2004, the college has received three hundred and twenty seven (327) applications even before the declaration of results of Intermediate public examination. The college also claims that in the University Inter collegiate Competitions, the students of the petitioner college received maximum number of prizes and that the college is organizing social welfare and philanthropic programmes in its endeavour to promote extra curricular activities among its students. The college, according to the averments in the writ affidavit, is housed in a pucca building, on lease valid upto 2006, well equipped with computer lab and other laboratories for chemistry, physics, botany, biotechnology and electronics besides a good library. The petitioner alleges that it has purchased Acs.2.00 of land in Survey No.406 of Jammulapalem village of Kavali Mandal for construction of permanent building, which they proposed to start early.

The University granted temporary conditional affiliation to the petitioner college for the academic year 2003-04. However, by impugned order, University refused affiliation for the academic year 2004-05 so as to implement the judgment of the Division Bench of this Court in W.P.No.12340 of 2003. The petitioner alleges that it

is not a party to the said writ petition and therefore the same is not applicable to the petitioner. According to the petitioner, it applies to those colleges, which did not fulfil the conditions laid down in the Rules promulgated vide G.O.Ms. No.29 dated 05.02.1987 known as A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (hereafter called, Higher Education Rules). The petitioner therefore contends that the impugned order is contrary to the provisions of the Education Act and principles of natural justice besides being irrational. The petitioner also contends that even as per the Higher Education Rules, the college can seek renewal of temporary affiliation while continuing in leasehold premises and there is no bar for giving such affiliation.

The petitioner further states that it has already acquired land for construction of its own building. It could not do so due to continuous drought conditions for the last several years and due to financial constraints. Abruptly, the University deprived the petitioner of affiliation, which would defeat the very object of Section 20 of the Education Act. It is stated that even where a college existing as on the date of coming into force of Rules does not own permanent buildings, it can be granted temporary affiliation for a period of one year. Reliance is placed on Section 26 of the Education Act, which is to the effect that no educational institution can be closed down unless a notice of not less than one academic year has been given to such educational institution by the competent authority.

In all the other cases the affidavit averments are on similar lines. It is not necessary to refer to them in detail dealing with every writ petition. The following table would reveal the essential particulars of all the colleges as to when they were established, when they obtained permission from the competent authority, when initially temporary affiliation was granted and the nature of holding the college premises.

Table showing particulars of petitioners

Sl.No.	Writ Petition Nos…of 2004	Name of the College and Place	Year of establishment	Affiliation	No.of years completed	Rented
1.	11149	Aditya Degree College, Nellore.	1999-2000	Temporary	5 years	Rented
2.	12665	Balaji Degree College for Women, Tirupathi.	1999-2000	Temporary	5 years	Rented
3.	10838	Krishna Chaitanya Degree College, Nellore.	1998-1999	Temporary	6 years	Rented
4.	11164	Sri Vaishnavi Degree College, Ranampet.	1998-1999	Temporary	6 years	Rented
5.	11885	Krishnasarada Degree College, Porumamilla.	1997-1998	Temporary	7 years	Rented
6.	12503	HM Degree College, Rayachoty.	1997-1998	Temporary	7 years	Rented
7.	12518	Dr.A.E.R.Degree College, Tirupathi.	1997-1998	Temporary	7 years	Rented

8.	11163	Vivekananda Degree College, Nellore.	1996-1997	Temporary	8 years	Rented
9.	12620	SGKR Degree College, Kadapa.	1996-1997	Temporary	8 years	Rented
10.	12683	Sri Parameswara Degree College, Jammalamadugu.	1996-1997	Temporary	8 years	Rented
11.	10865	Sri Venkateswara Arts & Science College, Chittoor.	1994-1995	Temporary	10 years	Rented
12.	12584	Sri Vedavyasa Degree College, Proddatur.	1994-1995	Temporary	10 years	Rented
13.	12703	S.V.Degree College, Nellore.	1994-1995	Temporary	10 years	Rented
14.	10974	M.S.R.Degree College, Kavali.	1993-1994	Temporary	11 years	Rented
15.	12330	Indira Rajiv Memorial College, Kuppam.	1993-1994	Temporary	11 years	Rented
16.	12610	CSSR & SRM Degree College, Kamalapuram.	1993-1994	Temporary	12 years	Rented
17.	12671	C.Dass Arts & Science College, Sathyavedu.	1991-1992	Temporary	13 years	Rented

As seen from the above table, there are two colleges, which have already completed five years of existence with temporary affiliation. There are twelve colleges which have completed six to ten years with temporary affiliation and four colleges have completed more than ten years and indeed one college namely, C.Dass Arts and Science College, Satyavedu, petitioner in W.P.No.12671 of 2004 has completed thirteen years in a rented building. The University has had been regularly granting temporary affiliation year after year to all the above colleges. None of the colleges own their own buildings and all of them are functioning in rented buildings and therefore presumably for that reason they did not apply for permanent affiliation. It is also a fact that all the petitioners were informed by the Registrar of University by letter dated 23.03.2004 to strictly adhere to norms of the Government, State Council and the University in possessing own buildings for running their colleges, and that the matter will be viewed seriously and further extension of affiliation will not be granted. All the petitioners were asked to inform the Registrar as to whether the college is located in own building or rented building on or before 12.04.2004. It is not clear whether any of the petitioners have sent reply to the letter of the Registrar dated 23.03.2004.

The writ petitions were filed during the last week of June, 2004. On 13.07.2004, the writ petitioners also sought for an interim direction suspending the impugned order of the University dated 24.06.2004. In the interlocutory applications, this Court passed the following order on 13.07.2004.

Since the petitioner failed to produce the representation and Inspection Commission's report, an interim direction in the form of final order cannot be granted and the matter requires adjudication on merits.

In view of the same, post the writ petition for hearing before the appropriate Bench hearing the matters,

on 19.07.2004.

Meanwhile, the petitioner and respondents shall make available the Inspection Commission's Report of the previous academic year. If the petitioner feels that there is no condition in the Inspection Commission's Report that the petitioner should own a building, it is open for the petitioner to make a representation to the University, and on making such a representation, the University shall pass orders giving reasons for not granting temporary affiliation.

Thereafter, the petitioners made representations to the University. On 16.07.2004, Registrar informed the petitioners that the Inspection Commission had been appointed to inspect the facilities viz., the class rooms, libraries, equipments, laboratory, faculty etc., and to recommend to the University whether temporary affiliation can be granted for the academic year 2003-04, that the Inspection Commission submitted its report giving the facts that Inspection Commission has no power to issue any instructions to the college and that the University takes decision on various conditions to be fulfilled by the college. The petitioners were further informed that after receipt of the orders of the High Court, notices dated 23.03.2004 were issued to all the colleges informing that University shall not grant extension of affiliation for the academic year 2004-05, if the college is located in rented buildings even after completion of five years of its establishment. In view of the orders of the High Court of Andhra Pradesh, the Executive Council by resolution dated 12.06.2004, University has not granted extension of affiliation for 2004-05.

The University has filed counter affidavits in all the matters. As directed by this Court, the Vice Chancellor (In-charge) also filed additional affidavit clarifying certain aspects, which cropped up during the hearing. Be that as it is, it is not necessary to refer to counter affidavits in all the cases. Taking again, the Writ Petition No.10974 of 2004 as illustrative case, the averments in the counter affidavit of the University (filed by the Registrar) in the said writ petition are as follows. The Higher Education Rules govern the Government/Private/aided and unaided undergraduate degree colleges. State Council is the competent authority to give permission to start a new private unaided college. The University is concerned with the granting of temporary affiliation as well as permanent affiliation to private and Government degree colleges. As soon as the State Council or Commissioner of Collegiate Education grants permission, the college applies for recognition/affiliation to the University by paying necessary affiliation fees. The University appoints Inspection Commission to verify whether a college provided infrastructure facilities and possess other requirements as per the norms prescribed by the State Council or Commissioner of Collegiate Education. The University need not extend temporary affiliation when the educational institution is being run in a leased building even after five years. After completion of five years, the institution should get permanent affiliation by fulfilling all the conditions mentioned in the Rules.

After the judgment of this Court in W.P.No.12340 of 2003, the college was served with notice dated 23.03.2004 well in advance and later passed impugned orders not extending affiliation. It is also stated that in W.P.No.12340 of 2003, the University filed a counter to the effect that notices are being issued shortly to all the colleges, which are accommodated in rented buildings with an advice to start construction and complete the buildings before closure of academic year 2004-05.

In the additional affidavit filed by the Vice Chancellor, it is stated that the Vice Chancellor is passing orders of affiliation. These orders are reported to the Executive Council, which will again reported to the Academic Senate for ratification. In the matter of
disaffiliation of colleges, Executive Council takes a decision and the same will be reported to the Academic Senate, which meets twice in a year, which is authority to advise to Executive Council on academic matters. The Vice Chancellor is the Chairman of the Executive Council and the Academic Senate and in matters of urgency, the Vice Chancellor takes decisions and reports the same to Academic Senate for its ratification. As the Academic Senate meets twice in a year, the Vice Chancellor takes approval of the Standing Committee of the Academic Senate, which meets very often depending on the necessity.

The Vice Chancellor further stated that after receiving the orders of the High Court of Andhra Pradesh in W.P.No.12340 of 2003 dated 07.01.2004, notices were issued to all the colleges to comply with the conditions stipulated by University and the State Council. The impugned orders were passed subsequently refusing to extend temporary affiliation for the year 2004-05. So as to avoid inconvenience to the students, the colleges were permitted to continue degree second year and third year courses. There are sixteen colleges which have completed five to ten years of their establishment in rented buildings and therefore temporary affiliation has not been extended to these colleges in due obedience to the orders of the High Court.

Submissions of the learned counsel for petitioners

The learned counsel for the petitioners in these writ petitions M/s.B.V.Subbaiah, O.Manohar Reddy, M.Venkata Narayana, P.V.Sanjay Kumar and U. Muralidhar Rao raised various contentions and made the following submissions, which are common to all. The petitioners were granted temporary affiliation since the date of establishment. Such affiliation was granted to offer various degree courses and not to the buildings where the courses are conducted. The condition to have infrastructure facilities for running degree courses is not mandatory when an educational institution seeks temporary affiliation for running the courses. Reliance is placed on the executive order issued by the Government vide G.O.Rt.No.1623 dated 12.10.1990. Even at the time of seeking permanent affiliation, the law does not require an educational institution to own its own buildings. When the petitioners have complied with the various rules and regulations made by the Government, State Council as well as University, denial of extension of temporary conditional affiliation for the academic year 2004-05 on the ground that colleges are being run in rented/leased buildings is without jurisdiction and without authority of law.

All the petitioners also made an alternative submission contending that an educational institution is entitled to run a degree college in rented buildings for a period of five years. In view of the fact that the condition is relaxable under the rules, and as the petitioners were continuously granted temporary affiliation even after completion of five years, it should be deemed that the condition is relaxed and

therefore wherever the colleges have not completed ten years, the University is under obligation to grant temporary affiliation for the year 2004-05. The University did not impose any condition at the time of granting affiliation even during the academic year 2003-04, for construction of permanent buildings and in the absence of any such condition and without proper notice, the University could not have withheld the temporary affiliation. The same is violation of principles of natural justice. The petitioners have not violated any of the conditions stipulated in the proceedings granting temporary affiliation for 2003-04.

All the counsel for the petitioners vehemently contend that the judgment of the Division Bench in W.P.No.12340 of 2003 has no application to the petitioners and the University has not applied its mind properly. According to the learned counsel, this Court directed the University not to grant temporary affiliation for those educational institutions, which violated conditions of temporary affiliation and as the University has not imposed any conditions at any time during the existence of the colleges, the Division Bench judgment has no application to the colleges as the petitioners have not violated any conditions stipulated in the proceedings granting temporary affiliation for 2003-04. It is also the contention of the petitioners that after the judgment of the Division Bench, the Registrar of the University addressed letters to all the correspondents/principals of the affiliated colleges advising them to send proposals in the prescribed proforma in Form III with affiliation fee and inspection fee of Rs.10,000/- (Rupees ten thousand only) each on or before 07.02.2004. The petitioners have complied with the same and therefore the University cannot reject temporary affiliation for the year 2004-05.

All the learned counsel also submit that all their clients have already purchased land or entered into agreements for purchase of lands, and that if one year time is given, they would complete the construction of buildings to satisfy the requirements of Rule 10 of the Higher Education Rules. They also brought to the notice of this Court that when the admissions were notified, all the colleges have received applications for admission to various degree courses far in excess of available seats and if the admissions to first year degree courses for the academic year
2004-05 are prohibited, the colleges, the students and the parents would suffer irreparable loss and injury. They plead this Court to consider the matter having regard to the principles of equity and also the conduct of the University in not putting the petitioners on notice with regard to owning permanent buildings.

The learned counsel for the petitioner in W.P.No.10865 of 2004,
Sri V.Jogaiah Sarma raised an additional contention. According to him, as the petitioner in the said writ petition constructed own buildings in 1994 itself at Muthirevula and subsequently shifted to Chittoor town, by reason of the orders of the Government dated 24.11.2003, the petitioner cannot be said to have completed the period of five years and therefore denial of temporary affiliation is illegal.

The learned counsel for the petitioner in W.P.No.10974 of 2004 Sri U.Muralidhara Rao also raised the following four additional contentions. First, Rule 9(2)(b) of the Higher Education Rules is not mandatory and is only directory. Secondly, under Section 19(16) of A.P. Universities Act, 1991 (hereafter called, the

Universities Act), the Executive Council is empowered to suspend or withdraw affiliation only after consultation with the Academic Senate. In the absence of such consultation with Academic Senate, the impugned order of the respondent University suffers from an incurable defect. Thirdly, when even a private educational institution is to be closed down, Section 26 of the Education Act requires a notice of not less than one academic year expiring with the end of academic year and indicating the intention to do so has to be given to the Manager of the educational institution. As no such notice was issued, the impugned order must suffer invalidation. Lastly, the University is granting temporary affiliation to private colleges owning permanent buildings and if the same is denied to the colleges running in rented buildings, it amounts to discrimination.

Submissions made on behalf of University

The learned counsel for the University Sri B.Adinarayana Rao submits that the impugned order was issued in compliance with the orders of the Division Bench in W.P.No.12340 of 2003 dated 07.01.2004. Strong reliance is placed on the observations made by the Division Bench. Alternatively, he would submit that all the petitioner colleges did not own permanent buildings and in the absence of such facility, it is always open to the University to refuse temporary affiliation under Rule 9(2)(b) of the Higher Education Rules. Justifying the action of the University in continuously, for over years, granting temporary affiliation even after the expiry of five years of establishment, the learned counsel would submit that as per Section 57(3)(k) of the Universities Act, all the Statutes, Regulations and Ordinances made by University prior to coming into force of the Universities Act continue to have in force. As the laws of the University dealing with affiliation are not inconsistent with the provisions of the Education Act and the Higher Education Rules, University scrupulously followed the rules of affiliation. He would also urge that after the judgment of the Division Bench, all the colleges were issued notices and as they did not comply with the requirement of owning permanent buildings, impugned order was passed refusing temporary conditional affiliation. He also submits that Clause (16) of Section 19 of the Education Act is attracted only at the time of granting permanent affiliation and it is not mandatory to consult Academic Senate at the time of granting temporary affiliation.

Points for consideration

The background facts and submissions of the counsel for the respective parties throw up the following points for consideration.

(i) Whether private degree college cannot be denied temporary affiliation after completion of five years of establishment on the ground that such college does not own permanent buildings?

(ii) Whether owning permanent buildings is essential pre-requisite, for a private degree college to seek permanent affiliation of the University?

(iii) Whether the impugned order passed by the University refusing temporary conditional affiliation to all the private degree colleges suffers from illegality,

arbitrariness and irrationality? and

(iv) What is the relief to be given to the petitioner colleges?

The Public Interest Litigation (PIL) case before this Court

Before taking up points for consideration, it is most appropriate to advert to and analyse the judgment of the Division Bench of this Court in **Secretary, Society for Common Cause v Secretary, A.P.State Council for Higher Education** (W.P.No.12340 of 2003 dated 07.01.2004, hereafter called, the PIL case).

Society for Common Cause filed Writ Petition No.12340 of 2003 seeking a writ of mandamus declaring that the action of State Council and the University in continuing to grant recognition/affiliation to respondents 3 to 7 herein namely, Sri Krishna Chaitanya Degree College, Rao's Degree College, Vivekananda Degree College, Jagan's Degree College and Lendy Degree College, in spite of violation of Higher Education Rules and the orders in G.O.Rt.No.1623 dated 12.10.1990 as illegal, arbitrary and unjust. A consequential direction was also sought directing due compliance of minimum requirements for establishment recognition and affiliation of colleges as per the statutory rules and executive orders.

University and other respondents filed counter affidavits after receiving notices from this Court, wherein it was stated that after receiving representation dated 12.04.2003 from a social worker and Member of Lok Adalat namely, Sri D.Mastan Reddy, University deputed Inspection Commissions to all the colleges. It was stated that colleges which have completed five years, are being run in rented accommodation and therefore University is taking necessary steps to issue notices to those colleges. For other colleges, which did not complete five years, notices were being sent to start construction of own buildings and complete before the closure of academic year 2004-05. The Inspection Commissions submitted reports in respect of colleges in Chittoor, Kadapa and Nellore Districts at the time of grant of affiliation for the academic year 2003-04. The recognition was subject to fulfilling all the deficiencies pointed out by the Inspection Commissions before the closure of admissions for the academic year 2003-04 i.e.31.07.2003. It was also stated before the Court that while granting extension of temporary conditional affiliation to the existing courses, the affiliated colleges are requested to comply with conditions stipulated by the Inspection Commission and in case there is default, the colleges will not be granted affiliation for future years nor would be permitted to make admissions during the subsequent academic years. The Division Bench considered the matter with due regard to various averments made in the counter affidavit of the University and respondent colleges therein and disposed of the PIL case ordering as follows:

"... We find that sorry state of affairs are prevailing in the colleges in question and that in spite of grant of conditional affiliation no steps are being taken by the colleges to comply with the conditions and the University also did not take steps to ensure regular inspection and compliance of the conditions and in case despite extension of affiliation, conditions are not complied with, University in the matter of course would not have continued to grant further affiliation. Once temporary conditional affiliation is granted, it must be ensured by the respondents that such conditions are scrupulously complied with and failure on the part of the affiliated institution must result in some penal consequences against them including stoppage of further extension which course of action has not been followed by the respondent-University.

Therefore, in this petition filed as PIL, while deprecating the action of the respondent-University, we issue directions to respondents 1 and 2 to ensure that for the academic year 2004-2005 no affiliation is granted to such of the institutions which had been granted temporary conditional affiliation and had not complied with the conditions in time. Further extension of affiliation will be granted only on compliance with the conditions, otherwise the respondents shall cancel their affiliation. Ordered accordingly."

A reading of the judgment of the Division Bench in PIL case would conclude the following situation.

a) The colleges did not take necessary steps to comply with the conditions imposed by the University at the time of granting temporary conditional affiliation;

b) When the conditions imposed are not complied with, University should not have granted further affiliation as a matter of course;

c) Once the temporary conditional affiliation is granted, all the colleges must scrupulously comply with the conditions. The University did not take steps to ensure regular inspection and compliance with the conditions, which has resulted in sorry state of affairs;

d) Failure on the part of the affiliated institutions must result in some penal consequences against the colleges, including stoppage of further extension, which course of action has not been followed by the respondent University; and

e) University should ensure that for the academic year 2004-05, no affiliation is granted to private colleges unless and until they comply with the conditions. If the conditions are not complied with, affiliation should be cancelled.

In view of the categorical findings, observations and directions of the Division Bench of this Court in the PIL case, the submissions of the learned counsel for the petitioners that this Court did not give any direction to withhold affiliation to petitioner colleges cannot be countenanced. Even while passing impugned orders, the University informed the petitioners that the question of granting further affiliation shall be considered only after the colleges are shifted to their own buildings. The permission granted to the petitioners to establish college was not withheld and has admitted in the additional affidavit of the Vice Chancellor, so as to avoid inconvenience to the students, the colleges were permitted to continue second year and third year courses in the colleges. This only means that as and when the petitioner colleges acquire or construct their own buildings, the colleges would be considered for the grant of permanent affiliation. Indeed none of the counsel disputes this position.

In view of the above, nothing is to be considered. However, the learned counsel, as seen supra, has raised various contentions in respect of their prayer for invalidation of the impugned orders. Therefore, this Court proposes to consider various points framed for consideration.

Points for Consideration

In Re Point Nos.(i) and (ii)

(i) Whether private degree colleges cannot be denied temporary affiliation after completion of five years of establishment on the ground that such college does not own permanent buildings?

(ii) Whether owning permanent buildings is essential pre-requisite, for a private degree college to seek permanent affiliation of the University?

A.P. Education Act, 1982 is a consolidation Act aimed at reforming, organizing and developing the entire education system in the State. Chapter VI of the Act deals with various provisions governing establishment, administration and control of various educational institutions. Section 20 of the Act deals with permission for establishment of educational institutions and no educational agency is entitled to start any educational institution-elementary, upper primary, Intermediate or higher education institutions – unless the competent authority specifically permits such agency to start such institution. As per clause (12) of Section 2 of the Act, competent authority means, an officer authorized by the Government by notification to perform the functions of the competent authority under the Act for such area and for such purposes as may be specified in the notification.

Section 21 of the Education Act specifically deals with grant or withdrawal of recognition of educational institution. Sub-section (2) of Section 21 lays down the conditions under which the competent authority is empowered to withdraw recognition of the institution or take such other action as is deemed necessary. Either before withdrawing recognition or taking such other action, under sub-section (2) of Section 21, the competent authority shall give the manager of the institution an opportunity of making representation against such withdrawal or the other action. Clause (28) of Section 2 defines manager to mean in relation to a private educational institution, the person nominated to manage the affairs of the institution under sub-section (2) of Section 24 of the Act. Be that as it may, sub-section (3) of Section 21 reserves plenary power to the Government and the same reads as under:

> "21(3) Where the Government are of opinion that the recognition granted to any local authority, educational institution or private educational institution should, in the public interest be withdrawn, they may, after giving one month's notice to the manager of such institution to make any representation, withdraw, by notification, the recognition granted to the said institution."

The Higher Education Rules were promulgated in exercise of powers conferred by Sections 20 and 21 of the Education Act read with Rule 99 of the Higher Education Rules. Section 20 deals with permission for establishment of educational institution, where as Section 21 deals with grant or withdrawal of recognition of institutions imparting education. Section 99 of the Education Act confers power on the Government to make Rules to carry out on all or any of the purposes of the said Act. Section 99(1)(b) enumerates the subjects covering which the Government may promulgate Rules. The grant of recognition to educational institutions and conditions therefor is also one of the subjects enumerated therein. [Section 99(1)(b)(xii)]

Indeed Section 21 of the Education Act itself is couched in a clear language that

while granting recognition, the competent authority may impose conditions as may be prescribed in regard to accommodation, equipment, appointment of teaching staff, syllabi, textbooks and matters relating thereto. Permission to establish educational institution only enables an educational agency or educational society to establish an institution imparting education or upon higher classes in existing institution. However, before starting such an educational institution, an educational institution has to obtain recognition from competent authority. Insofar as primary, secondary and higher education is concerned, the competent authority to grant permission happens to be the same competent authority, which issues permission to establish an educational institution. However, insofar as the Intermediate education (Junior colleges) and Collegiate education (Degree colleges) are concerned, the Higher Education Rules provide for different competent authorities. For instance, the competent authority for granting permission for establishment of junior colleges and degree colleges is A.P.State Council for Higher Education. The competent authority for granting recognition/affiliation to a junior college is Board of Intermediate Education and in the case of a degree college, it is the University, which has to grant affiliation. Be it also noted that the Education Act and Higher Education Rules use the words 'recognition' and 'affiliation' interchangeably and both of them have same meaning.

The power of the competent authority to grant permission as well as the power of the competent authority to grant affiliation is not unfettered. The power has to be exercised subject to the provisions of the Education Act and the Higher Education Rules. No competent authority can either grant permission or affiliation ignoring the conditions prescribed for grant of such permission/affiliation. {See the observation of Supreme Court in **Unni Krishnan, J.P. v State of A.P**,(Para 169 at p.2245)}. To reiterate, Section 21 of the Education Act itself provides that the competent authority may by order in writing grant affiliation to an educational institution permitted to be established under Section 20 of the Education Act subject to such conditions as may be prescribed by the Rules made by the Government. What are the conditions to be prescribed at the time of granting recognition? The Act and the Rules provide different conditions at different stages. The first stage is the stage of grant of permission under Section 20 of the Education Act read with Rules 4,5 and 8 of the Higher Education Rules. A college or an educational institution has to make an application for opening new college in Form I. As all the petitioner colleges in these cases were granted permission to establish colleges and as the same is not in doubt, it is not necessary to refer to these provisions any further.

In the second stage, an educational agency, which is permitted to establish a college, has to seek affiliation or recognition as the case may be. A Government college can be granted permanent affiliation straight away by the competent authority subject to such Government institution satisfying the conditions prescribed for the purpose, but a private college cannot be accorded permanent affiliation. Stage II deals with temporary affiliation. It is necessary to read Rule 9 of the Higher Education Rules, which is relevant for the purpose and reads as under.

9. Power to Grant or withdraw Recognition/Affiliation:-

(1) *Competent authority:-* (a) The Board of Intermediate Education shall be the competent authority for

granting or withdrawing of temporary/permanent recognition/affiliation for all educational institutions imparting intermediate education as per clause (ii) of sub-section (1) of Section 9 of the Andhra Pradesh Intermediate Education Act, 1971 (Act No.1 of 1971).

(b) For all other institutions mentioned at (b) to (f) in sub-rule (2) of Rule 1, the competent authority for granting or withdrawing of temporary/permanent recognition/affiliation shall be the University concerned.

(2) (a) Government Institutions shall be accorded permanent recognition/affiliation straight away, by the competent authority if he is satisfied that the conditions prescribed for this purpose are satisfied.

(b) To start with, the private institution shall be accorded temporary recognition/affiliation subject to fulfilment of such conditions as may be prescribed by the competent authority. The temporary recognition/affiliation is renewable annually for a period of five years relaxable to ten years in deserving cases by which time the educational agency shall fulfil the conditions stipulated for grant of permanent recognition/affiliation. Applications for renewal of temporary recognition/affiliation shall be made to the competent authority in Form III not later than three months prior to the expiry of the period of temporary recognition/affiliation.

(3) (a) The educational agency of the private institution in respect of which the competent authority have accorded permission, is permitted to admit students and to appoint staff by following the procedure prescribed in Rule 7, immediately after the receipt of the orders of permission to open their institution. After fulfilling the conditions stipulated for grant of temporary recognition/affiliation, the educational agency shall make an application to the competent authority in Form IV for approval of the appointments made and in Form III for grant of temporary recognition/affiliation to the institution. The applications shall be made accompanied by the following documents within a period of three months from the date of receipt of the order of the permission-

i. copy of the orders in which permission to open the institution has been accorded;

ii. lists of teaching and non-teaching staff appointed;

iii. lists of students admitted into various classes/courses;

iv. bank challan in proof of the payment of inspection fee and Recognition/Affiliation Fees.

(b) On receipt of the application from the educational agency, the

competent authority shall make inspection of the institution to find out the extent of fulfilment of the conditions prescribed for grant of temporary recognition/affiliation on a date convenient to both parties.

(c) Unless the students are admitted and staff are appointed and other conditions are satisfied, the competent authority shall not accord approval to the staff appointed and accord temporary recognition/affiliation to the private institution and consequently the students shall not be allowed to appear for the public examination.

(4) The Inspection Fee and Recognition/Affiliation Fee to be collected from the educational agency shall be as prescribed by the competent authority indicated in sub-rule (1). The fees shall be credited in their respective head of account and can be utilised for incurring the expenditure involved.

The third stage is when an educational agency seeks permanent affiliation. A private college, which was enjoying temporary affiliation at least for a period of five years, can alone apply for permanent affiliation. Here Rule 10 of the Higher Education Rules is relevant and the same reads as under.

10. Conditions for grant of permanent recognition/affiliations:- The competent authority shall grant permanent recognition/affiliation to the Government and Private Institutions which are enjoying temporary recognition/affiliation at least for a period of five years, subject to the fulfilment of the following conditions –

(1) that the institution has pucca buildings of its own with the prescribed facilities like furniture, library, laboratory, play ground etc;

(2) that the educational agency fulfilled all the conditions prescribed for granting temporary recognition/affiliation;

(3) that the educational agency has implemented all the instructions issued by the competent authorities in all matters;

(4) that the educational agency has not denied admission to any student on the grounds of religion, caste, race or language;

(5) that the educational agency has not encouraged any propaganda or practice wounding the religious feelings of any class of citizens of India or insulting the religion or the religious beliefs of that class;

(6) that the educational agency has not refused for constituting the institution as a centre for conducting the Government Examinations like Andhra Pradesh Public Service Commission, etc;

(7) that the educational agency has appointed the staff following the procedure prescribed by the Government, from time to time, and got the appointments approved by the competent authority;

(8) that the educational agency has reinstated the staff member whom it has removed/suspended, on receipt of orders from the competent authority for such reinstatement.

A degree college, oriental college, Hindi Maha Vidyalaya, law college and postgraduate colleges have to obtain affiliation from the concerned University. As can be seen from Rule 9(2)(b) of the Higher Education Rules, a private college shall be accorded temporary affiliation subject to fulfilment of conditions as may be prescribed by the University. Such temporary affiliation is granted for a period of one year and is renewable for a period of five years by which time the educational agency shall have to fulfil the conditions stipulated for grant of permanent affiliation. The period of five years, during which, a college may be granted temporary affiliation annually, can however be relaxed upto ten years in deserving cases. Rule 9(2)(b) of the Higher Education Rules further makes it clear that all applications for temporary affiliation have to be made in Form III not later than three months prior to the expiry of period of temporary affiliation. Insofar as seeking permanent affiliation is concerned, a college which has completed five years of existence with temporary affiliation, has to necessarily seek permanent affiliation subject to condition that such college has pucca buildings of its own with prescribed facilities like furniture, library, laboratory etc., and also subject to condition that it has fulfilled all the conditions prescribed for granting temporary affiliation. In case, a college has not constructed its own building during the period of five years, unless and until the University has granted relaxation, such college cannot function further and it is deemed that its affiliation is no more in force. Section 21 of the Education Act requires the competent authority, that is the University to grant affiliation in writing duly imposing conditions. Therefore, it is reasonable to assume that even when the University grants relaxation of the conditions as per Rule 9(2)(b) of the Higher Education Rules and extends temporary affiliation beyond five years, such relaxation has to be by order in writing.

The sum and substance of Rules 9 and 10 of the Higher Education Rules read

together is that a private college, which has been given temporary affiliation has to construct its own buildings within a period of five years and seek permanent affiliation under Rule 10 of the Higher Education Rules by making an application in Form III. If a college fails to own pucca buildings, it has to seek relaxation of the Rules, which has to be granted by the University by order in writing under Rule 9(2)(b) of the Higher Education Rules. Though the legal position is clear, it is contended by the learned counsel for the petitioners that for grant of even permanent affiliation, there is no requirement of owning permanent buildings. This submission is misconceived and is to be rejected. Though the college established with the permission of the competent authority can function with temporary affiliation in rented buildings for a period of five years, a college cannot be permitted to function beyond five years in rented buildings and such college has no right to seek permanent affiliation from the University.

In these cases, the petitioner colleges in W.P.Nos.11149 and 12665 of 2004 have completed five years by the academic year 2003-04. The petitioners in other writ petitions have completed more than six years, but still curiously the University went on granting temporary conditional affiliation. The University counsel has not produced before this Court any order in writing by the University granting relaxation enabling the petitioners to seek temporary conditional affiliation, year after year, even beyond five years. In the absence of any such relaxation granted by the University, the petitioners cannot contend that they have a right to continue even though they have completed five years with temporary affiliation. The petitioner colleges ought to have constructed the permanent buildings before the expiry of five years of their existence and ought to have obtained permanent affiliation. If it was not possible to own buildings, petitioners ought to have specifically asked for relaxation of the Rule. Even assuming that by reason of the temporary affiliation granted by the University even beyond five years, the conditions are deemed to have been relaxed, the petitioners in W.P.Nos.12703, 12584 and 10865 of 2004, which have completed ten years; writ petitioners in W.P.Nos.10974 and 12330 of 2004, which have completed eleven years with temporary affiliation and the petitioners in W.P.Nos.12610 of 2004 and 12671 of 2004, which have completed twelve and thirteen years respectively with temporary affiliation cannot take plea of deemed exemption. All these petitioners also did not make any efforts to own their own buildings and some of them now contend that they have purchased the land, and within a year or so, they will complete the construction of the buildings and on that ground they seek a writ of mandamus to the University to grant temporary affiliation for the academic year 2004-05. The petitioners have not complied with the conditions specified in Rules 9 and 10 of the Higher Education Rules and therefore they are not entitled for any relief in these Writ Petitions.

It is the submission of the learned counsel for the petitioners that as per the judgment of the Division Bench in PIL case, the University is entitled to withhold temporary conditional affiliation only in respect of those institutions, which have not complied with the conditions, that the University never imposed any condition requiring the petitioner colleges to own their own buildings or to construct their own

buildings and therefore the impugned orders must be held as one without application of mind. This submission is devoid of merit and without any substance.

The Education Act and the Higher Education Rules use the terms recognition and affiliation as interchangeable and synonymous. There was some debate during the course of arguments that affiliation is given to the courses conducted by a private educational institution and such affiliation is nothing to do with educational infrastructure (buildings, laboratories, playgrounds etc). The submission is liable to be rejected. Under the University Grants Commission Act, 1956, a recognized University is empowered to recognize courses, prescribe standards of education for such courses, conduct annual examinations, evaluate answer scripts and award diplomas or degrees (which confers an educational qualification on a person). Indeed, as per the provisions of University Grants Commission Act, it is only a recognized University, which can award degrees. Without such recognition/affiliation by the University concerned, the object of conducting educational courses cannot be achieved nor an educational institution can insist that the certificates or degrees awarded by them should be recognized by the State.

In **Unni Krishnan, J.P. v State of A.P.** (supra), a Constitution Bench of the Supreme Court in the context of considering right of a person and/or educational agency to establish an educational institution, relying on the decision of Nine Judge Constitution Bench in **St.Xaviers College v State of Gujarat** made the following observations, which are apposite.

They also recognized that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. **But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognized by the State – much less have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance – the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognized by the Government or the appropriate authority and/or is affiliated to one or the other Universities in the country. Unless it is recognized and/or affiliated as stated above, its certificates will be of no use. No one would join such educational institution.**

(emphasis supplied)

It was further observed:

The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory – in the interest of general public – upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing/affiliating authority is the 'State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and

privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. **Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part-III; its activity is bound to be characterized as unconstitutional and illegal.**

(emphasis supplied)

Affiliation or recognition of a college by the University renders the activity of the college meaningful. It would not be correct to say that University gives affiliation to a course. Affiliation is given to a private college to offer courses and not only to offer courses. The learned counsel for the petitioners in some of the writ petitions Sri B.V.Subbaiah invited the attention of this Court to the following observations made in **St.Xaviers College v State of Gujarat** (supra):

Affiliation to a University really consists of two parts. One part relates to syllabi, curricula, courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students. This part relates to establishment of educational institutions. The second part consists of terms and conditions regarding management of institutions. It relates to administration of educational institutions.

I do not find any thing in the above passage, which would support the contention that affiliation is given to the course. Indeed a reading of paragraphs 16 to 18 from **St.Xaviers College** case (supra) would show that the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of educational institution. Therefore, when it is said that University has given affiliation to a private college it only means that recognition is given by the University to a college to offer courses and that such affiliation is in recognition of infrastructural facilities available at the college.

A reading of Rules 9 and 10 of Higher Educational Rules would show that if a college seeks permanent affiliation such college should necessarily own pucca buildings with facilities like furniture, laboratory, library and playground etc. For these reasons, the submission that the temporary affiliation given to the petitioners to offer degree courses cannot be withheld on the ground that they do not have own buildings, has to be rejected.

The reliance placed on G.O.Rt.No.1623; Education Department dated 12.10.1990 is unsustainable. So as to facilitate private institution in the higher education in the context of resources constraints, and so as to liberalise pre-conditions for starting new colleges/new courses, the Government issued the said G.O. during the academic year 1990-91. It only gave certain relaxations with regard to owning the land and depositing corpus fund at the time of starting the college. It does not deal with granting of a permanent affiliation nor does it dilute the rigour of Rules 9 and 10 of Higher Education Rules. Indeed, in paragraph 7 of G.O.Rt.No.1623, dated 12.10.1990, the Government ordered to make necessary amendments to the Higher Education Rules promulgated vide G.O.Ms.No.29 dated 5.2.1987, which is also mentioned in the reference entry of the said G.O. The

learned counsel has not placed before me any notified amendment modifying Higher Education Rules. Thus, this G.O. has no application nor does it confer any benefit on the petitioners.

The learned counsel for the petitioners in all the writ petitions would urge that the University never imposed any condition at any time during the existence of colleges requiring them to own pucca buildings and therefore the petitioners cannot be said to have violated any such condition. This submission is also devoid of any merit. A reading of Rules 9(2)(a) and 9(3)(a) of Higher Education Rules would show that an educational agency after obtaining permission has to admit students and appoint staff by following the procedure prescribed in Rule 7 of the Higher Education Rules immediately. After fulfilling the conditions, the educational agency has to make an application to the competent authority in Form IV for approval of appointments and shall have to apply to University for grant of temporary affiliation in Form III.

It is not denied before me that every year before the commencement of academic year, all the petitioners have been applying for temporary affiliation in Form III. Columns 10 and 18 require the educational institution to give particulars of accommodation and columns 20 an 21 require the response of the educational agency as to whether such agency would abide by the rules and regulations for granting temporary affiliation made under the Education Act. These read as under:

10. (a) Details of accommodation (supporting documents to be enclosed):

(b) Whether the accommodation provided is owned or rental:

i. If owned, documentary evidence to be produced.

ii. If rental, lease-hold deed for a period of not less than five years to be produced **(a declaration to construct own buildings within a period of five years also has to be produced).**

18. Full details of the property that is present in the name of the education agency (Documentary evidence to be produced).

20. Whether the educational agency has fulfilled all the conditions prescribed for granting of temporary/permanent recognition/affiliation, if not, the conditions yet to be satisfied shall be indicated:

21. Whether the educational agency is agreeable to abide by the rules and regulations prescribed for granting of temporary/permanent recognition/affiliation and other rules made under various provisions of Andhra Pradesh Education Act, 1982.

(emphasis supplied)

Further at the time of applying for temporary affiliation in Form III, the Secretary/Correspondent/Manager of the educational institution has to give a Declaration, which reads as under:

DECLARATION

On behalf of the educational agency of the institution, I _____ son/daughter/wife of _____ do hereby declare that the rules and departmental orders have been fulfilled. I also declare that we shall abide by the conditions, rules of recognition/affiliation and also other relevant provisions of the Andhra Pradesh Education act, 1982 (Act No.1 of 1982) and the rules made thereunder.

I also declare that the particulars given above are correct to the best of my knowledge.

Signature of the Secretary/

Correspondent/Manager

(with stamp)

When every year the educational agency is required to give a declaration and also declaration to the effect that it would abide by the rules and regulations and also another declaration that the educational institution would construct buildings within a period of five years, it would not be possible to accept the contention that the University did not impose any conditions. I have gone through the temporary affiliation given to some of the petitioners (for instance the petitioner in W.P.No.104974 of 2004), which would show that temporary affiliation was initially granted subject to colleges fulfilling all conditions laid down in the rules and regulations. Therefore, the submission made is misconceived. Since the date of the establishment of the petitioner colleges were well aware that within a period of five years, they have to acquire pucca buildings of their own and failure to do so would entail in withdrawal of temporary affiliation.

The upshot of above discussion is as follows. A private educational institution has to obtain permission under Section 20 of the Education Act read with Rules 4, 5 and 6 of the Higher Education Rules from State Council. Such permission has to be obtained by making an application in Form I. At that stage, there is no necessity to give particulars of infrastructure owned by the educational agency. It is sufficient if particulars of facilities available are mentioned in the application. In the second stage, an educational agency, which is permitted to open/establish a private college has to apply to the University for affiliation/recognition. The application has to be made for affiliation in Form III along with a declaration that such agency would construct own building within a period five years. The University has to grant temporary affiliation under Rule 9(2)(b) of the Higher Education Rules subject to condition that the institution would acquire its own building within a period of five years. However, in a deserving case, the University may, by order in writing, relax this condition and permit granting temporary affiliation to a private educational institution even if such college is being run in a rented building upto a period of ten years. In any case, it is not open nor it is competent to the University to grant temporary affiliation beyond the period of ten years. Every college, which has completed five years of its existence with temporary affiliation and owns building, has to apply for permanent affiliation and obtain such affiliation as per Rule 10 of the Higher Education Rules. Reading Rule 9(2)(b) of the Higher Education Rules and Section 21 of the Education Act together, it is not possible to accept any submission

that University granted relaxation to all the petitioner colleges to continue on temporary affiliation. Therefore, it is doubtful whether various orders issued by the University to the petitioner colleges after completion of five years are legally sustainable. *Prima facie*, the action of the University in extending temporary affiliation to the petitioner colleges beyond five years is unauthorised, illegal, especially when there is no specific order in writing relaxing the Rule 9(2)(b) of the Higher Education Rules in favour of petitioner colleges. This aspect of the matter has to be enquired into by the Government to fix responsibility for such illegal action of the University authorities. The submission that the judgment of the Division Bench of this Court in PIL case has no application to the petitioner colleges is to be noticed only for the purpose of rejecting the same. It cannot be denied that the petitioner colleges do not satisfy the provisions of the Education Act and Higher Education Rules to be entitled to continue after a period of five years with temporary affiliation. In passing the impugned order, not extending conditional temporary affiliation, the University has acted strictly in accordance with the Judgment of Division Bench of this Court in PIL case. Point Nos.(i) and (ii) are answered accordingly.

In Re Point No.(iii)

Whether the impugned order passed by the University refusing temporary conditional affiliation to all private degree colleges suffers from illegality, arbitrariness and irrationality?

An administrative order can be subjected to judicial review on the ground of illegality, irrationality and impropriety. An order passed in exercise of statutory powers (a 'statutory order') in addition to the above grounds can be challenged on the ground that the same is *ultra vires* or in excess of powers conferred by the Statute. None of the Counsel seriously impeach the impugned order on the ground that it is improper or irrational. The learned counsel, especially, the learned counsel for the petitioner in Writ Petition No.10974 of 2004, contends that Rule 9(2)(b) of Higher Education Rules is not mandatory and it is only directory. It is the further submission of the learned counsel that the impugned order is vitiated for non-compliance with the provisions of Section 19(16) of the Universities Act. It was also contended that Section 26 of the Education Act has been violated and the impugned order is discriminatory. These submissions need to be considered one after the other.

i) Whether Rule 9(2)(b) of the Higher Education Rules is mandatory?

A.P.Education Act is an Act *inter alia* for the purpose of regulating standards of education and educational institutions especially the educational institutions at various levels established by private educational agencies. Wherever any system of education is specially governed by either by State enactment or by Parliament enactment, the Act has taken care to designate specified authority under those enactments as competent authority to control and regulate the standards of education and other aspects of that system of education. For instance, Intermediate Education (10+2) is regulated by A.P.Intermediate Education Act, 1971 and Graduate and Post-Graduate Education offered/recognised by a University, is

regulated by the UGC Act and/or A.P.Universities Act or Special University enactment as the case may be. In either case, either the Education Act or the various Rules made in exercise of power under Section 99 of the Education Act lay down that Intermediate Colleges or Degree Colleges should adhere to the standards specified/prescribed by the Board of Intermediate Education or concerned University as the case may be.

It is now well settled that the Rules made by the executive in exercise of delegated legislative power when validly made gets incorporated into parent Statute and must be treated as integral part of the main Statute. It is also well settled that the absence of penal provision itself does not make a provision directory. One has to look to the history of the legislation, the object of the legislation, the evil, which the legislation seeks to wipe out and the intention of the legislature in enacting a provision. Further, even if there is ambiguity or inconsistency in provision of law, the Court has to harmoniously construct the provision keeping in view the object of the parent legislation.

It is the function of the State to provide facilities for education. Supplemental to this main activity, the participation of private persons in imparting education has long been recognised as charity. Indeed, in the State of Andhra Pradesh private educational institutions were always subjected to Legislations like A.P.(Andhra Area) Elementary Education Act, 1920; the A.P. (Andhra Area) Aided Institutions (Prohibition of Transfer of Property) Act, 1948; A.P.Educational Institutions (Requisitioning and Acquisition) Act, 1956 and A.P. Recognised Private Educational Institutions (Control) Act, 1975 and the like. These Acts provided for strict control of private educational institutions providing for autonomy to the management in certain matters. These enactments have been repealed by the Education Act. Even under these enactments, the Government insisted that a private educational institution must sometime or later should acquire their own buildings. The idea was to perpetuate the corporate nature of an educational institution, which is as mentioned earlier, is always started for achieving a charitable purpose. Keeping this in view, when Rule 10 of the Higher Education Rules requires a College to obtain permanent affiliation by owning its own building, it would not be possible to interpret Rule 9(2)(b) of the Higher Education Rules as directory. The purport of Rules 9 and 10 of the Higher Education Rules together has been summarised supra and it is not necessary again to repeat the same. Suffice to mention that insofar as seeking temporary affiliation after obtaining permission under Section 20 of the Education Act, an educational institution may do so for a period of five years even with rented buildings. After five years of its existence with temporary affiliation, an educational institution has to necessarily obtain permanent affiliation by owning its own buildings. If the conditions are not complied with, it is always open for the competent authority or the Government to withdraw the permission as well as the affiliation/recognition, which would certainly be penal in nature. Therefore, Rule 9(2)(b) of the Higher Education Rules must be held as mandatory and not as directory.

Before considering the other questions, it is necessary to deal with the submission made by the learned counsel for the University. The learned counsel has taken me through various regulations in Chapter-XI of the Laws of Sri Venkateswara University. These provisions were Statutes or Statutes made by the University in exercise of their powers under Sri Venkateswara University Act, 1954. It is the submission that these provisions only require a private educational institution to provide for accommodation/equipment, hostels and play grounds adequately and to satisfy the Executive Council and that there is no requirement of owing building by the College. Reliance is placed on Clause (k) of sub-section (3) of Section 57 of the Universities Act. Section 57 deals with repeal. By reason of sub-section (1) thereof Sri Venkateswara University Act, 1954 stands repealed. Sub-section (3) of Section 54 contains a saving clause. Clause (k) of sub-section (3) provides that all the Statutes, Ordinances and Regulations made under the relevant University Act, any University continue to be in force and be deemed to have been made under all the provisions of Universities Act provided that they are not inconsistent with the provisions of this Act. The argument appears to be that the University action in extending affiliation even beyond five years is justified having regard to the Laws of the University. This Court is afraid that the submission is misconceived and devoid of any merit.

Rules 8 and 21 of Laws of University specifically refer to accommodation and equipment to be provided by the College. Before granting affiliation, the Executive Council has to rely on the report of the Inspection Committee. Though the relevant provisions in Laws of the University do not specifically mention about pucca owned building, having regard to the elaborate exercise involved before granting affiliation, it must be held that what is provided by the Statute is the requirement of owning building. The absence of words like “temporary accommodation” are significant and in the context assume importance. In any view of the matter, having regard to the provisions of Rule 21 of Laws of University, it must be held that it is inconsistent with the provisions of Higher Education Rules in force and therefore reliance placed under Section 57(3)(k) of the Universities Act is not proper. After coming into force of the Universities Act, the University is bound to adhere to provisions of Education Act and Higher Education Rules in granting affiliation/recognition to a private degree college. As already mentioned above, the respondent University cannot behave as if it is above law and/or ‘law unto itself’.

ii) Consultation with Academic Senate

Sri Venkateswara University is governed by the provisions of A.P.Universities Act, 1991 in the matters of establishment, reconstitution, duties and powers of various authorities and authorised officers of the University. Chapter-III deals with Officers of the University. Section 9 of the Universities Act treats the Chancellor, Vice-Chancellor and others as Officers of the University. As per Section 10 of the Universities Act, Governor of Andhra Pradesh shall be the Chancellor. As per Section 11 of the Universities Act, Vice-Chancellor is appointed by the Government and Section 13 of the Universities Act provides for powers and duties of the Vice Chancellor. The same reads as under:

13. Powers and duties of the Vice-Chancellor:- The Vice-Chancellor shall, by virtue of his office be a member and Chairman of the Board of Management and of the Academic Senate and shall preside at the convocation of the University in the absence of the Chancellor.

(2) He shall be entitled to be present at the address at any stage, any meeting of any Authority of University, but not to vote there at, unless he is a member of the authority concerned.

(3) He shall have the power to convene meetings of the Board of Management and the Academic Senate.

(4) It shall be his duty to see that the provisions of this Act, the Statutes, the ordinances and Regulations are duly observed and he may exercise all powers necessary for this purpose.

(5) He shall have power to interpret the provisions of this Act, the Statutes, the Ordinances and the Regulations. Any person or authority aggrieved may, within such time as may be prescribed by an Ordinance, appeal to the Chancellor;

Provided that, --

i. if such interpretation was given at a meeting of the Board of Management, the appeal shall lie to the Chancellor direct;

ii. if such interpretation was given otherwise than at a meeting of the Board of Management, the appeal shall be forwarded to the Chancellor through the Board of Management.

The decision of the Chancellor on the appeal shall be final.

(6) He shall give effect to the decision of the Authorities of the University taken in accordance with the powers conferred by or under this Act.

(7) He shall have such other powers as may be prescribed.

(8)(a) When, with regard to any matter in which any officer or authority may take action, the Vice-Chancellor considers immediate action desirable, he may subject to the general control of the Chancellor take such action as may be necessary but shall, as son as may be, report the action taken to the officer or authority concerned.

(b) An appeal shall lie to the Executive Council against any action taken by the Vice-Chancellor under Clause (a) affecting any person in the service of the University, at the instance of such person. Such appeal shall be filed within thirty days from the day on which such person has notice of the action taken.

(emphasis supplied)

An important provision to be noted is as per Section 13(8)(a) of the Universities Act, it is always permissible for the Vice-Chancellor to take immediate action in the event of emergency and report such decision or action for ratification authority. However, when a particular matter is dealt with by the Legislation or delegated Legislation, it is not permissible for the Vice-Chancellor to deal with such a situation in exercise of powers under Section 13(8)(a) of the Universities Act ignoring relevant provision. The power conferred on the Vice-Chancellor under Section 13(8)(a) of the Act essentially in the nature of executive power and the same neither supplement or supplant the Legislative and/or delegated legislative power. As held by this Court in **Ms.Kum Kum Lahiri Rao v Principal, Dr.B.R.Ambedkar College of Law**, Vice-Chancellor cannot pass any orders under Section 13(8)(a) of the Universities Act in respect of a matter which is already been a subject matter of rule or resolution of the authority of the University, like Academic Senate.

The Board of Management, Academic Senate, the Faculties, the Board of

Studies are treated as authorities of the University. Be it noted by Amendment Act No.13 of 1995, the Board of Management was redesignated as Executive Council. The powers and duties of the Executive Council are mentioned in Section 19 of the Universities Act. Very vide powers are conferred on Executive Council in matters of academic standards, conducting of examinations, granting of recognition/affiliation, student discipline, creation, appointment and discipline of staff members and the like. All the powers under Section 19(5) of the Universities Act are to be exercised by the Executive Council by itself. However, as per clauses (16), (17) and (18) of Section 19, the Executive Council is required to consult Academic Senate. These clauses read as under.

> 19.(16). To affiliate colleges to the University as Honours Degree, Oriental or Professional Colleges under conditions prescribed by the Academic Senate and to suspend or withdraw such affiliation after consultation with the Academic Senate;
>
> (17). To confer in consultation with the Academic Senate either *suo motu* or on a representation received in this behalf from a college, autonomy on any college in the University area and to likewise withdraw such autonomy;
>
> (18). To grant recognition to the institution and oriental colleges under conditions prescribed by Statutes after consultation with the Academic Senate and to suspend or withdraw such recognition after consultation with the Academic Senate.

A bare look at the above provisions would show that these deal with the recognition/affiliation of a Degree College. The Legislature thought it fit to introduce an element of consultation by Executive Council with Academic Senate at the time of granting affiliation/recognition or conferring autonomy on a private college. But, Section 25 of the Universities Act, which deals with powers of the Academic Senate does not confer any power on the Academic Senate as such. The Academic Senate is conferred with the power to make recommendation to the Executive Council and nothing more. Though clauses (16) (17) and (18) of Section 19 stipulate that the University shall take a specified action after consultation with the Academic Senate, there is nothing in the Statute which renders the decision of the Executive Council illegal or improper for want of such prior consultation with the Academic Senate. Indeed, Section 13(8)(a) of the Universities Act conferred power on the Vice-Chancellor, who is the Chairman of the Executive Council, as well as Academic Senate to take a decision in the event of emergency and seek ratification from the authorities of the University. While interpreting clauses (16), (17) and (18) of Section 19, Section 13(8)(a) cannot be ignored, because, it would render Section 13(8)(a) vicious. It is settled principle of interpretation of Statutes that while interpreting scope of power conferred on public authority, entire Statute has to be read as a whole and no provision of the Statute can be ignored. In a given case, even when Vice-Chancellor takes a decision and gets it ratified by the Academic Senate as well as the Executive Council or even in a case where Executive Council takes a decision having regard to exigencies and then takes ratification of the Academic Senate, the same cannot be termed as illegal. Having regard to the scheme of Universities Act and the role assigned to the authorities like Executive Council, Academic Senate and Board of Studies, it is not possible to hold that the absence of prior consultation with Academic Senate would render decision of Executive Council illegal. It would,

however, be ideal for all the authorities who are charged with single aim of maintaining the standards of the University to act in a spirit of cooperation and coordination shirking "one-upmanship". It is also not possible to accept that irregularity in consultation with either party renders the decision of the Executive Council illegal.

A reference may be made to decision of a Constitution Bench of the Supreme Court in **State of U.P. v. Manbodhan Lal**. Article 320(3) of the Constitution of India provides that Union Public Service Commission or State Public Service Commission shall be consulted by the Government in matters of recruitment, dismissal from service etc. Whether prior consultation with Service Commission renders an order of the Government of compulsory retirement of an employee illegal ? This was the question considered by the Supreme Court in the said judgment. Their Lordships laid down as under:

> We have already indicated that Art.320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a Court of law, or entitle him to relief under the special powers of a High Court under Art.226 of the Constitution or of this Court under art. 32. It is not a right which could be recognised and enforced by a writ.... On the other hand, Art.311 of the Constitution has been construed as conferring a right on a civil servant of the Union or a State, which he can enforce in a Court of law. Hence, if the provisions of Art.311, have been complied with in this case- and it has not been contended at any stage that they had not been complied with – he has no remedy against any irregularity that the State Government may have committed. ...Unless, it can be held, and we are not prepared to hold, that Art.320(3)(c) is in the nature of a rider or proviso to Art.311, it is not possible to construe Art.320(3)(c) in the sense of affording a cause of action to a public servant against whom some action has been taken by his employer.

Their Lordships also further observed as under.

> ...The words quoted above give a clear indication of the intention of the Constitution makers that they did envisage certain cases or classes of cases in which the commission need not be consulted. If the provision of Art.320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary.
>
> If it had been intended by the makers of the Constitution that consultation with the Commission should be mandatory, the proviso would not have been there, or at any rate in the terms of which it stands. That does not amount to saying that it is open to the Executive Government, completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted....It is, therefore, incumbent upon the Executive Government when it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation.

Therefore, mere irregularity in consultation does not confer an enforceable right. It does not, however, mean that every time the Executive Council can ignore Academic Senate at the time of granting affiliation or withdrawing affiliation. Indeed, initially when the temporary affiliation was granted to petitioner college in Writ Petition No.10974 of 2004, the Board of Management passed orders after consultation with the Academic Senate. Further, in the affidavit filed by the Vice-Chancellor, the procedure in the matter of granting affiliation and withdrawing affiliation has been mentioned to the effect that the Vice-Chancellor is taking decisions and getting it ratified by the Executive Council and Academic Senate

which meets twice in a year. This procedure is not in strict compliance with the provisions of Section 19(16) of the Universities Act. But, the same does not make any difference insofar as petitioner colleges are concerned.

iii) Effect of Section 26 of the Education Act

Section 26 of the Education Act read as under:

26. Private institution not to be closed down, etc., without sufficient notice:- (1) Save as otherwise provided in this Act, no private institution shall be closed down or discontinued, unless a notice of not less than one academic year expiring with the end of any academic year and indicating the intention to do so, has been given by the manager to the officer authorised by the competent authority in this behalf.

(2) If any manager fails to give notice as required under sub-section (1), he shall, on conviction, be punished with fine which may extend to five thousand rupees or with simple imprisonment which may extend to one year or with both and with a fine or rupees one hundred for every day of further default.

Section 26 of the Education Act deals with a situation where a private educational institution is discontinued or closed down. I fail to understand how the same is attracted to the facts of this case. It is a provision which requires a Manager of a private educational institution to issue a notice of not less than one year to the competent authority or an officer authorised by such competent authority, a non-compliance of which attracts a find of Rs.5,000/- or simple imprisonment for one year under Section 26(2) of the Education Act. The submission that at least one year notice should be given to the petitioner colleges before withdrawing affiliation is devoid of any merit. Further, Sections 27 to 29 deal with a situation where an educational institution is discontinued or closed down. In such an event, the property belonging to a private educational institution cannot be alienated and the Manager has to handover the properties to the competent authority. These provisions are made keeping in view the interest of the students of private educational institutions which are closed down or discontinued. In such an event, it is always open to the competent authority to transfer the students from one private education institution to another educational institution. The provisions have no application to the case where the University refused to renew temporary affiliation. Further, the permission granted under Section 20 of the Education Act can be withdrawn by the Government under Section 21(3) of the Education Act. The said provision does not require one year notice to educational institutions before permission is withdrawn. To the same effect is the Rule 11 of Higher Education Rules under which notice of one year is not required before withdrawing affiliation. Therefore, the submission is rejected.

iv) Whether the action of respondents is discriminatory ?

As mentioned earlier, so as to give certain clarifications, Vice-Chancellor filed an additional affidavit. Paragraph –3 thereof reads as under.

It is humbly submitted that the matter was placed again before the Executive Council meeting held on 12.6.2004 and it was resolved to implement the orders of the Hon'ble High Court and the University and not to extend temporary affiliation to the colleges which are being run in rented buildings even after completion of five years. Accordingly, temporary affiliation has not been extended to them for the academic year 2004-2004. However, they have been permitted to continue II and III year with a view

not to cause any inconvenience to the students pursuing the courses. It was also mentioned in the order that the affiliation shall be extended only for such colleges complying with the conditions of affiliation vis-à-vis the orders of the Hon'ble High Court. It is submitted that there are 23 colleges which are under permanent affiliation. There are 16 colleges which have completed 10 years out of which 9 colleges have permanent buildings and 7 colleges have rented buildings. Temporary affiliation was extended for this academic year only to the colleges which have own buildings and the colleges will be served notices to comply with other conditions before the completion of the academic year 2004-2004. Temporary affiliation was not extended to 7 Colleges which are still houses in rented buildings even after 10 years. Further, it is submitted that there are 25 colleges which are under temporary affiliation after completing 5-10 years of establishment and possess permanent buildings and temporary affiliation was granted for this academic year 2004-2005 only. Notices will be served on them to comply with the conditions governing permanent affiliation before the completion of the academic year.

Learned counsel for the petitioner Sri Muralidhar Rao in Writ Petition No.10974 of 2004 submits that when the Colleges which have completed five to ten years are allowed with temporary affiliation though they own no buildings, denial of the same treatment to the petitioner colleges is discriminatory. This submission ignores the underlying constitutional principle adumbrated in Article 14 of the Constitution of India. Article 14 does not prohibit different treatment for different classes of people and things. It only prohibits classification which has no basis and which is irrational. It is now axiomatic that reasonable classification is permissible under Article 14 of the Constitution of India. It is not necessary to refer to various supporting authorities and it would be suffice to refer to the following observations in **State of A.P. v. Nallamilli Rami Reddy**

What Article 14 of the Constitution prohibits is "class legislation" and not "classification for purpose of legislation". If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. **Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.**

(emphasis supplied)

A college which was allowed to continue with temporary affiliation though it owns its own building is certainly belongs to a different class when compared with petitioner colleges which do not own permanent buildings, but seek temporary affiliation. The difference is not only palpable but glaring and patent. It may be for various reasons that some of the colleges within the affiliating jurisdiction of the University continue with temporary affiliation though they have permanent buildings. Whether such course is permissible or not will have to be decided in appropriate case. Even in respect of these colleges, the University states that notices are being issued to those colleges with permanent buildings to apply for permanent affiliation.

The Division Bench delivered the judgment in PIL case on 7.1.2004. After the judgment of this Court, by letter dt.16.1.2004 the Registrar of the University advised all the Correspondents/Principals of the affiliated colleges to send proposals in Form

III for consideration of grant of extension of temporary affiliation for the academic year 2004-2005. Placing reliance on the said letter, it is contended that petitioners were never put on condition to own building. Therefore, it would be arbitrary to penalize the petitioner colleges for not owning building. This submission cannot be accepted. As already held supra, it was not competent for the University to grant temporary affiliation beyond the period of five years and therefore any submission presumably based on principle of estoppel does not require consideration. In any view of the matter, the impugned order was issued after issuing notice to all the colleges to acquire own buildings which would be sufficient compliance with the principles of natural justice.

Learned counsel for the petitioner, Sri Muralidhar Rao, has placed reliance on **The Managing Board of the Milli Talimi Mission, Bihar v. State of Bihar and Al-Karim Educational Trust v. State of Bihar** in support of the contention that the College which is permitted to be established has a right to seek affiliation. After perusing the two judgments, it becomes clear that the same were rendered in the context of enforcement of right of a minority institution under Article 30 of the Constitution of India, and even these decisions laid down that it is always permissible for the State to impose reasonable conditions for grant of recognition/affiliation. These decisions have no application to the facts of this case. This Court finds no substance in the submissions made by the learned counsel for the petitioners and the Writ Petitions are liable to be dismissed with costs.

The submission made by learned counsel for the petitioner in Writ Petition No.10865 of 2004, Sri Jogaiah Sarma, is that as the College was permitted to shift from their own building at Muthiregula to Chittoor town, the date of shifting must be treated as the date for reckoning five years period while considering the application for temporary affiliation. The submission does not merit any consideration. When the petitioner college was permitted to be shifted from its original place to Chittoor town, the same does not amount to granting temporary affiliation afresh. The permission granted by the Government to shift in relaxation of the Rules is altogether different from the affiliation granted by the University. As already noticed, in relation to Degree Colleges, the competent authority for granting permission to establish the College is different, and the competent authority for granting affiliation/recognition is altogether different. It is not the case of the petitioner that after shifting to Chittoor town, the petitioner approached the University for fresh temporary affiliation duly withdrawing the earlier affiliation. Therefore, the submission is rejected.

In Re Point No.(iv)

Whether this Court can permit the petitioners by imposing conditions?

All the learned counsel in one voice contend that as the University allowed them to run colleges with temporary affiliation in rented buildings, it would be just and proper

and also equitable to permit the colleges for a period of one more year during which time all the colleges would acquire/construct their own buildings. This passionate submission cannot be accepted by this Court. It is well settled that in exercise of powers under Article 226 of the Constitution of India, High Court cannot issue a Mandamus which would be contrary to law. In the same, this Court cannot direct public authority by a Mandamus to take such action which would amount to contravening the law. A Mandamus shall issue from this Court strictly in accordance with law and there can be no Mandamus above law or ignoring law. (See **Brij Mohan Parihar v. M.P.S.R.T.C., LIC of India v. Asha Ramachandra Ambedkar,** and **M/s.Sri Narasimha Wines v. The Prohibition & Excise Superintendent**)

The action or inaction of the University

The word *universitas* was originally applied to any corporate body, but later it was reserved only for such Corporations of learning in medieval age. Universities were called *studia generalia* because they welcome scholors from all parts. Invariably, from the days of Plato's Academy (supposed to be the first university) the universities were initially patronized by Pope or High Ecclesiastical Authority or Sovereign. University consisted of group of scholors and students. These scholors existed only for the development and extension and transmission of knowledge. In the long history, University evolved to be the only centre of highest learning with power to confer degrees or titles of having attained a distinguished degree of level of scholorship in a branch of learning. Therefore, the essential attribute of the University is imparting knowledge which necessarily means great skill, acumen in managing affairs related to knowledge. It is more than unfortunate that the Sri Venkateswara University in granting affiliation proved to be skilful only in violating the law of the land.

In umpteen decisions, the Courts have held that the university autonomy should be preserved. This was on the premise that the university which is manned by experts in the field of knowledge and administration would do all things for achieving optimum levels of spreading knowledge. This is very conspicuous by its absence in these matters. The sorry state of affairs has been deprecated by the Division Bench in PIL case. Indeed, from the earliest times, in many universities "Law" was recognised as a major subject of study. But, unfortunately, Sri Venkateswara University ignored the law. This Court is of the considered opinion that at every stage of managing the private educational institution, the university has failed in discharging its duty under the Universities Act.

The University has produced particulars of various Private Degree Colleges under its wings. There are 109 Private Degree Colleges. 23 of them were granted permanent affiliation as they own their own buildings. Curiously, though there are other 34 colleges with own buildings, they are still being continued with temporary affiliation. There are 23 colleges which have completed more than five years, but still they are permitted with temporary affiliation. The other 29 colleges have not completed five years. No proper explanation is given either by the Registrar or by

the Vice-Chancellor in their affidavits as to why 34 Private Degree Colleges are still granted temporary affiliation, though they own their own buildings and satisfy one of the important conditions under Rule 10 of the Higher Education Rules. Till the matter was brought before this Court by way of PIL case, it appears the University authorities did not seriously apply their mind.

In all the cases, the university authorities were blissfully ignorant of all the binding provisions of the Universities Act and it appears that the University was not having proper legal advise. These matters must not be left the way they are. This Court has strong reason to believe that the Legislature also had visualized such situations when the Education Act was enacted and therefore Section 92 was added in the Education Act which reads as under:

92.Powers of Government to give directions:- (1) The Government may, subject to other provisions of this Act, by order, direct the Director or any other officer not below the rank of a District Educational Officer, to make an enquiry or to take appropriate proceeding under this Act in respect of any manner specified in the said order; and the Director or the other officer, as the case may be, shall report to the Government in due course the result of the enquiry made or the proceeding taken by him.

(2) The Government may give directions to any educational institution or tutorial institution as to the giving effect to any of the provisions contained in this Act or of any rules or orders made thereunder and the manager or owner, as the case may be, of such institution shall comply with every such direction.

Section 92 of the Education Act confers plenary power on the Government (i) to direct the Director or the District Educational Officer to make an enquiry or to take appropriate proceedings under the Act in respect of any matter specified in the order; and (ii) to take appropriate action after receiving the enquiry report. The power of the Government to order enquiry is a broad power and there is nothing in the Universities Act or the University Grants Commission Act which curtails or prevent exercise of such power under Section 92 of the Education Act. Therefore, this Court is of the considered opinion that the Government should order an enquiry by a Committee consisting of Principal Secretaries of the Departments of Higher Education, Technical Education and Chairman of A.P.State Council of Higher Education. Such enquiry shall have to be with reference to the granting of temporary affiliations by the University ignoring the provisions of law and with reference to fixing responsibility on those officers and authorities of the University which compelled this Court to deprecate the actions of the university. The University shall forthwith initiate action against all affiliated colleges keeping in view observations in the judgment in PIL case and in this judgment.

The Registry of this Court shall communicate a copy of this order to the Chief Secretary to the Government of Andhra Pradesh for complying with this direction within a period of four weeks from the date of receipt of a copy of this order.

Conclusion

For all the above reasons, the following order is passed in this batch of Writ Petitions.

i. This Court holds that the impugned orders do not suffer from any illegality or infirmity and that the orders are passed strictly in accordance with the provisions of the Universities Act and the Higher Education Rules, and keeping in view the judgment of Division Bench of this Court in Writ Petition No.12340 of 2003, dt.7.1.2004;

ii. All the Writ Petitions filed by the petitioners are dismissed with costs; and,

iii. The Government of Andhra Pradesh shall appoint a Committee to enquire into various aspects as pointed out in this judgment in paragraph under the heading “The action or inaction of the University” as above.

_____ (V.V.S.RAO, J)

20.8.2004

pln/bnr

Note: LR copy be marked.

(B.O)

bnr

ASSISTANT REGISTRAR

//TRUE COPY/

SECTION OFFICER

To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1. The Registrar, Sri Venkateswara University, Tirupathi, Chittoor District.

2. The Principal Secretary, Higher Education, State of A.P., Secretariat, Hyderabad.

3. The Secretary, A.P.State Council of Higher Education, Saifabad, Hyderabad.

4. 8 LR copies.

5. Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

7. 2 CCs to the G.P. for Higher Education, High Court Buildings, Hyderabad (OUT).

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9. The Secretary, Department of Higher Education, Government of Andhra Pradesh, Secretariat, Hyderabad.